

**General Terms and Conditions (GTC) - WIPA Werkzeug - und Maschinenbau GmbH,  
Benzstraße 12, 48703 Stadlohn, Germany**

**I. Scope, information, general**

1. These GTC shall apply to any relationship between us and our Customers on an exclusive basis. Unless expressly agreed otherwise, no deviating terms and conditions shall apply.
2. For the purpose of these GTC, Customers are consumers that are 18 years of age and up or companies within the meaning given below. We shall not sell to consumers not yet of the above age.
  - a.) A company within the meaning of these GTC is, in accordance with § 14 BGB (German Civil Code), any natural or legal person or a partnership having legal capacity (e.g. an *Aktiengesellschaft, GmbH*) that when concluding a transaction acts in pursuance of its commercial operation or self-employed work. A partnership having legal capacity has the capacity of acquiring titles and enter into obligations.
  - b.) A consumer within the meaning of these GTC is, in accordance with § 13 BGB, any natural person that concludes a legal transaction to an end that cannot be subsumed under its commercial operation of self-employed work.

**II. Conclusion of contracts, quotations, payment**

1. A Customer's offers or quotation shall only be deemed accepted if we expressly say so.
2. If a Customer asks us for a binding offer, a written quotation shall become necessary, to which we are bound for 14 days. For the conclusion of a contract, it shall suffice that the Customer accepts the quotation. If the Customer does not place the order outlined in the quotation, we shall be entitled to charge a fee for said quotation as previously agreed with the Customer.
3. Our invoices shall be payable immediately net cash. After 30 days of non-payment upon receipt of the invoice, the Customer shall be deemed to be in arrears. To consumers, this shall only apply if our invoice or payment schedule mentioned this. A payment shall only be considered to have been made in time when the amount has been conclusively paid into one of our business accounts during the period given above.
4. If a Customer is in default of payment, consumers shall be charged an interest rate of 5 per cent above the then applicable base rate. If the Customer is a company, said interest shall amount to 8 per cent above the then applicable base rate. If a higher interest rate can be proven - say, by drawing down a bank loan - we shall be entitled to charge the higher interest rate.
5. If the Customer is a company as defined above, it may only exercise a right of retention if the counterclaim is based upon the same contractual relationship.
6. We reserve the right to make technical improvements and let designs evolve. If such technical improvements and design changes are made during one of our quotation's acceptance periods and we have delivered such a product, our contractual obligations shall still be considered met.  
We shall not be obligated technically to improve, or change the design of, products already delivered unless these are defective.

### **III. Delivery, delivery periods, transfer of risk**

1. Delivery shall occur ex our warehouses. Unless agreed otherwise, deliveries shall be subject to a charge. Agreed dates and periods shall be binding. Unless otherwise, agreed, we only deliver inside Germany.
2. Our prices (in euro) for deliveries (inside Germany) are ex warehouse, include VAT, currently 19 per cent, but exclude assembly, unless agreed otherwise.
3. Deliveries shall be made subject to the charges given. These charges do also include VAT, currently 19 per cent.
4. Should circumstances arise that may make it impossible to keep a date or meet a deadline, the Customer hereby undertakes to notify us in writing without any delay.
5. If the Customer does not take delivery of the delivery items at the agreed time, we shall be entitled to set a deadline, after whose unsuccessful expiration we shall be entitled to withdraw from the contract and claim damages.
6. The risk of an accidental loss or deterioration of the delivery items shall be transferred to the Customer no later than upon their hand-over.
7. In case of a sale by dispatch and if the Customer is a company, said risk shall be transferred to the Customer upon delivery of the delivery items to the person designated for their dispatch (e.g. the forwarder).
8. Regarding other products or services (e.g. partial deliveries, individual components, spare parts or other accessories) III 6 and 7 shall apply accordingly. Hand-over of the delivery items shall also be considered to have occurred if the Customer does not take delivery at the agreed time.
9. Insurance policies against damages in transit shall only be taken out at the Customer's request and expense.
10. If after the dispatch of a delivery item or partial delivery but prior to the transfer of risk the Seller's items are destroyed or damaged through force majeure, sabotage, war or other events or circumstances that are not the Seller's fault, the Seller shall be entitled to a payment worth the damaged or destroyed items.
11. If the builder-owner, Customer or its agent takes delivery of material from, say, the forwarder, he or she hereby undertakes to inspect the material for defects and, if need be, notify the forwarder in writing.
12. Customers have to take delivery of the delivery items (even in case of minor defects) irrespective of the warranty rights below.

### **IV. Force majeure**

1. If a deadline cannot be met due to force majeure, e.g. mobilisation, war, riots or other events that are not our fault, e.g. industrial action, the deadline shall be extended by such time that the event or its effects last.
2. We shall be liable for a delayed performance in case of our wilfulness or gross negligence or that of one of our representatives or vicarious agents and in case of an injury to life, limb and health caused by slight negligence as laid down by law. In other cases of default, our liability shall be limited to total damages worth 5 per cent next to the delivery items and to total damages in lieu of the delivery items (incl. wasted expenditure compensation) of 5 per cent of the value of the delivery. Any further claims by the Customer – even if we were set a deadline that has expired – are excluded. This limitation shall not apply in case of a culpable breach of

integral contractual obligations. Unless there is another case as set forth in Sentence 1 herein, however, damages shall be limited to a damage typical for the pertinent type of contract. This shall be without prejudice to the Customer's right to withdraw from the contract pursuant to § 326 section 5 BGB. There shall be no reversal of the burden of proof at the Customer's expense.

## **V. Warranty and defects**

1. To contracts with consumers, the statutory warranty regulation shall apply.
2. If the Customer is a company, we shall be liable for material defects in cases of our or our representatives of vicarious agents' wilfulness and gross negligence and in cases of a culpable injury to life, limb and health as laid down by law. Unless there is another case as set forth in Sentence 1 or 3 herein, however, damages shall be limited to a damage typical for the pertinent type of contract. Irrespective of this, we shall be liable pursuant to the Product Liability Act in cases of a culpable breach of an integral contractual obligation or if we have fraudulently kept the defect undisclosed or issued a guarantee regarding the condition of the delivery item. Unless there is another case as set forth in Sentence 1 or 3 herein, however, damages shall be limited to a damage typical for the pertinent type of contract.
3. If the Customer is a company, claims and rights pertaining to defective delivery items, regardless of their legal basis, shall become time-barred after 1 year, except for cases pursuant to § 438 section 1 no. 1 BGB (defect of title - immovables), § 438 section 1 no. 2 BGB (buildings, items for builders-owners), § 479 section 1 BGB (company's right of recourse) or § 634 a section 1 no. 2 BGB (building or work whose success is constituted by rendering pertinent planning or supervisory services). The cases set forth in Sentence 2 herein shall become time-barred after 3 years. Transactions with companies shall be subject to the Commercial Code and pertinent regulations
4. The statutes of limitation shall, however, apply as follows:
  - a) They shall not apply in cases of wilfulness or a fraudulent non-disclosure of a defect or if we issued a guarantee regarding the condition of the delivery item
  - b) Nor shall they apply to claims for damages because of a grossly negligent breach of obligation, a culpable breach of integral contractual obligations not constituted by the delivery of a defective item, a culpable injury to life, limb and health or arising from the Product Liability Act. They shall, however, apply to wasted expenditure compensation.

## **VI. Reservation of ownership**

1. The delivery items shall remain ours until paid in full. The following Sections 2 – 4 shall only apply if the Customer is a company, Section 5 shall apply to all Customers.
2. Companies shall have to handle delivery items with care unless their ownership has already been transferred. We shall have to be notified immediately should the delivery items be impounded or exposed to other interventions by third parties.
3. Companies shall be entitled to resell delivery items in the course of their ordinary business. Such Customer shall hereby assign to us any receivables from such a sale. We accept such assignment. The assignment shall apply regardless of the delivery items having been processed or not prior to such a sale. The Customer shall remain entitled to collect the receivable even after its assignment to us. This shall be without prejudice to our entitlement to collect the receivable ourselves. We shall, however, not collect the receivable for as long as the Customer is not in default of payment or subject to any insolvency proceedings or has suspended payments.

4. If our ownership of the delivery items expires due to a mixing or combination with other items (§§ 947, 948 BGB), we shall become owners or co-owners of the mixed or combined items at the ratio of the delivery items' invoiced total and the invoiced total of the mixed or combined items. In this case, the Customer's expectant right to the mixed or combined item continues. If the mixing is done in a way that makes the Customer's item the main item, the Customer shall assign us pro-rata (co-)ownership and administer it for us.
5. Drawings, depictions, calculations, technical documents and other descriptions remain ours. They may only be disclosed to third parties with our consent. We reserve all copyrights and ownership rights.

## **VII. Data protection**

1. The Customer gives its consent that we collect personal data for invoicing and cash payments, may inspect ID cards etc. and store such data in accordance with the Federal Data Protection Act (BDSG) .
2. We shall use Customers' data only to implement the respective contract. All data are stored and processed in accordance with the BDSG. We shall only pass on personal data to third parties if service partners are involved in implementing the contract, e.g. logistics partners or banks.
3. By concluding the contract, Customers give their consent to our collection, processing and use of their personal data as outlined above.
4. Pursuant to the BDSG, Customers are entitled to get free information on which of their personal data we have stored and to having these corrected, blocked or deleted. If you have any questions on our collection, processing or use of your personal data, want information or want data corrected, blocked or deleted or want to revoke your consent, please contact the officers at the address given above. If data are incorrect, we will of course correct them at the Customer's request. Customers are also entitled to revoke their consent to a storage of their personal data at any time. In such a case, their data will be deleted unless still needed to meet obligations arising from the contractual relationship or statutory regulations prohibit it.

## **VIII. Non-disclosure**

1. Customers hereby undertake to keep secret all non-public commercial and technical information and know-how they become aware of on the basis of the business relationship.
2. Any advertising of our business relationship shall require our prior written consent.

## **IX. Distance contracts**

1. If the Customer is a consumer (definition: I 2 b) and the contract is a distance contract (definition: Section 2 below), Sections 3 and 4 shall also apply. Other types of contract are not affected.
2. Distance contracts (*Fernabsatzverträge*) are contracts on a delivery of goods or a rendering of services, including financial services, concluded between a company and a consumer by means of telecommunications only. (The exception is a contract not concluded within the framework of a distribution or service system organised for distance sales.) Financial services within the meaning of Sentence 1 are banking services and services in connection with loans, insurances, individual people's pension schemes, financial investments and payment. Means of telecommunications are means of communication that do not require a personal presence when concluding a contract, e.g. letters, catalogues, telephone calls, telecopies, e-mails, radio, tele and media services.

### 3. Cancellation rights

Consumers have the following right of cancellation

#### **Cancellation**

You are entitled to cancel this contract for no cause within 14 days. Said period commences upon the day you or a third party designated by you and not the forwarder have taken possession of the delivery item.

To cancel the contract, you have to notify us (WIPA Werkzeug - und Maschinenbau GmbH, Benzstraße 12, 48703 Stadtlohn, Germany, phone: +49 (0)2563-20585-0, fax: +49 (0)2563-20585-20, e-mail: [info@wipa-germany.de](mailto:info@wipa-germany.de)) accordingly and in unequivocal terms by sending a letter, fax or e-mail, for example. You can use the template, but do not have to. To meet the deadline, it shall suffice to send the cancellation before the deadline expires.

#### **Consequences of a cancellation**

If you cancel this contract, we have to refund you all your payments including delivery charges (except if you opted for a mode of transport other than our inexpensive default option) no later than 14 days upon the day we have received your cancellation. Unless otherwise agreed, we will refund you your money using the same mode of payment you used. Refunds will never be subject to charges. We may withhold a refund if we have not yet received the goods back or until you have proved that you sent them, whatever occurs sooner. You have to send or return the goods without delay and no later than 14 days upon the day you sent us your cancellation. To meet the deadline, it shall suffice to send us the goods before the deadline expires. You shall pay the costs for such a dispatch. You shall compensate us for any loss in value if that can be put down to a handling of the goods not necessary for an inspection of their condition, properties and functionality.

You can use the following cancellation form:

#### **Cancellation form**

(Should you want to cancel this contract, please complete this form and send it to: WIPA Werkzeug - und Maschinenbau GmbH, Benzstraße 12, 48703 Stadtlohn, Germany, phone: +49 (0)2563-20585-0, fax: +49 (0)2563-20585-20, e-mail: [info@wipa-germany.de](mailto:info@wipa-germany.de))

- I/we (\*) hereby cancel the contract on the purchase of the following goods(\*)/rendering of the following services (\*)
- Ordered on (\*)/received on (\*)
- Consumer(s)' name
- Consumer(s)' address
- Consumer(s)' signature (hard-copy only)
- Date
- (\*) Delete where inapplicable

**End**

### X. Assembly

1. The Seller shall only make assemblies if thus agreed in writing.
2. In such cases, invoicing shall be based upon the previously agreed flat rates or the Seller's then applicable hourly rates, mileage fees, per diem rates, with travelling hours and mileage being included.

3. If a flat rate has been agreed and the installation or commissioning is delayed but the Seller not responsible, all waiting time, travel and other assembly staff costs shall be at the Customer's expense. If after the assembly has been concluded any commissioning or acceptance cannot be immediately occur for local reasons/reasons for which the Customer is responsible, any extra assembly staff costs shall be paid by the Customer.
4. When the work has been concluded, the Customer shall attest to the Seller's staff's working hours/work on the form provided; in case of long-lasting assembly work, this shall be done on a weekly basis. Travelling and waiting hours shall be considered working hours. If the Customer has not given its signature, the statements of the assembly staff may also be used for invoicing purposes.
5. Any auxiliaries and aids like lifting, tooling and transport devices, water and electricity shall be provided by the Customer at its expense. Auxiliaries shall be subject to the Seller's assembly staff's instructions. , Unless otherwise agreed in writing, in special circumstances the use of cranes shall be at the Customer's expense.
6. To store the pertinent parts, material and tools, sufficiently large, dry, lockable and heatable space must be provided. Any risk of loss on the construction site is the Customer's.
7. Before leaving the site, the Customer must ask the assembly staff what the current situation is. Before leaving the site, the Customer's assembly staff has to notify the Seller of any damages for which the Seller is to be held responsible. The Seller shall not be held responsible for any damage complained about later.
8. Any data on weights, measurements, performance, earning power, consumption or any other information on the delivery items are only approximations, irrespective of the place or time at which they have been rendered. Guaranteed properties of the delivery items for the purpose of § 443 BGB shall only be such that have been set forth in a written guarantee.
9. Unless the delivery item thus suffers major alterations and are unreasonable for the Customer to accept, the Seller shall be free to change its design and the processes within.
10. Other services, e.g. assembly, installation and commissioning, shall only be part of the SoS if thus specially agreed. If the Seller renders such services, the Customer must cooperate in full. In case of an installation by the Seller, the Customer shall – at its expense - see to conditions that make for a fast assembly.
11. At the Seller's request this shall include skilled German-speaking workers and auxiliaries, equipment, energy, water and other tools and supplies. In particular, the Customer shall – at its expense - see to a proper approach road and sufficient space for a rendering of the services, the right conditions on the construction site and all necessary permits.
12. Any delay because of a site left unprepared and consequential measures shall be at the Customer's expense. This shall particularly apply if because of an insufficiently prepared site systems cannot be installed and have to be stored or returned.
13. The Seller always delivers large-scale production switchboard cabinets tested for the pertinent power grid. If such grid should be incompatible and the Customer did not provide any pertinent specification, the Customer shall not be entitled to any compensation, any subsequent delivery in particular.

## **XI. Use of software/liability**

1. If the SoS includes software, the Customer shall be granted a non-exclusive right to use software supplied to be used on or in the delivery item, including its documentation. It must not be used on more than one system.

2. The Customer may only reproduce, revise and translate the software to the extent statutorily provided for (§§ 69a ff. Copyright Act). The Customer hereby undertakes never to remove or change without the Seller's express consent the manufacturer's notices and data, copyright notices in particular.
3. All other software and documentation (copies included) rights shall remain the Seller or software supplier's. No sub-licensing is permitted.
4. Unless otherwise derived from the below, any other claims by the Customer, irrespective of their legal basis, shall be excluded, unless a damage was caused wilfully. Therefore, the Seller shall not be liable for damages sustained outside of the delivery items, e.g. a financial loss, savings not made or other pecuniary damage on the part of the Customer. If the Seller's liability is excluded or limited, this shall also apply to its employees, representatives and vicarious agents' personal liability.
5. The Seller hereby points out that the state of the art does not provide for any exclusion of software faults in all applications, their conditions and combinations. The delivery item is thus only constituted by a software usable as outlined in the product description and operating instructions. Beyond this, we do not guarantee that the software and its data structure are non-defective. If it or the hardware it runs on is defective, within the warranty period of 1 year upon delivery the Customer may ask for a replacement/rework. For that purpose, the Customer must return any supplied hardware and data carriers including back-ups. The Customer must take action of its own to prevent or limit damages. Any back-up is the Customer's responsibility and the Customer indemnifies the Seller from and against liability.

## **XII. Customers' responsibilities and extra costs**

1. The Customer must see to its systems and sites being prepared for any installation set forth in the quotation or order confirmation. The Customer shall also have to accept and pay for ordered systems and equipment if these cannot be installed in its plant. This shall particularly apply to individual deliveries of switchboard cabinets and pre-tested plant components regarding their electrical connection to the Customer's plant.
2. The Customer hereby undertakes to prepare the construction site/installation site for a smooth installation. The approach road must be levelled at floor level and be capable of bearing vehicles. Preparatory work like earthwork, foundations, building work and scaffolding has to be finished. Foundations must be completely dry and hardened.
3. Any delay because of a site left unprepared and consequential measures shall be at the Customer's expense. This shall particularly apply if because of an insufficiently prepared site systems cannot be installed and have to be stored or returned.

## **XIII. Place of jurisdiction, applicable law, severability clause**

1. If the Customer is a *Kaufmann, juristische Person des öffentlichen Rechts* or *öffentlich-rechtliches Sondervermögen* within the meaning of these German legal terms, the place of jurisdiction is Ahaus.
2. These GTC shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. Any application of CISG is hereby excluded.
3. If a provision herein is or becomes void, either in part or in full, this shall be without prejudice to the validity of the remainder of the provisions. In lieu of the void provisions, the statutory regulations shall apply.

In case these English **General Terms and Conditions (GTC)** should be different from the German ones, the German Terms and Conditions apply.

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